

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

**PEYTON BALLARD, Individually and
On behalf of Others Similarly Situated,**

Plaintiff,

v.

**STATE OF OKLAHOMA, *ex rel.*,
THE ADMINSTRATIVE OFFICE OF THE
COURTS, *et al.*,**

Defendants.

CIV-16-66-R

ORDER

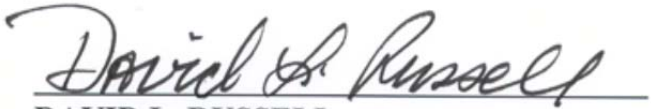
This matter comes before the Court on the Motion to Dismiss (Doc. No. 9), filed by Defendant the State of Oklahoma. Plaintiff responded in partial opposition to the motion. Having considered the parties' submissions, the Court finds as follows.

Plaintiff filed this action pursuant to the Driver's Privacy Protection Act. The State of Oklahoma seeks dismissal on the basis of Eleventh Amendment immunity, arguing that it has not waived its immunity and that Congress did not abrogate the States' Eleventh Amendment immunity in the Act. Plaintiffs did not respond to this argument, and thus the Court considers it confessed. As such Defendant State of Oklahoma is entitled to dismissal of Plaintiff's claim under the DPPA.

As an apparent alternative, Plaintiff requests that the Court hold the motion in abeyance pending the anticipated denial of an administrative tort claim she filed pursuant to the Oklahoma Governmental Tort Claims Act. The Court declines Plaintiff's request because the State is immune from suit in federal court even if it has waived its immunity with regard to GTCA's

claims. Therefore, absent a valid waiver, the State would be entitled to dismissal of an otherwise proper claim under the Oklahoma Governmental Tort Claims Act in federal court. As such, granting Plaintiff's request to avoid dismissal and permit amendment upon expiration of the 90-day waiting period would be futile. The State's immunity from suit also undercuts Plaintiff's request for discovery with regard to the State, which is therefore denied. The Motion to Dismiss filed by the State of Oklahoma (Doc. No. 9) is hereby GRANTED.

IT IS SO ORDERED this 5th day of May, 2016.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE